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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,897	03/02/2004	Daniel Hanchett	DH02U	2685

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EXAMINER

MAUST, TIMOTHY LEWIS

ART UNIT PAPER NUMBER

3751

DATE MAILED: 09/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/790,897	Applicant(s) HANCHETT, DANIEL	
	Examiner Timothy L. Maust	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 March 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-14 and 17-24 is/are rejected.
- 7) ☒ Claim(s) 4-7, 15 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Specification*

The abstract of the disclosure is objected to because superfluous language such as "This invention consists of". Correction is required. See MPEP § 608.01(b).

Claims 8, 13, 19 and 24 are objected to because of the following informalities:

In regard to claim 8, line 5, "perorations" should be - - perforations - -;

In regard to claims 13 and 19, line 6, "extending a for a selected" is grammatically incorrect; and in line 10, the period after "tubing" should be deleted; and

In regard to claim 24, line 1, apparently "13" should be - - 19 - -. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 8-11, 13, 14, 17-22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Drossbach.

In regard to claim 1-3, 9-11, 13, 14 and 18, the Drossbach reference discloses a corrugated "tubing" 1 having "ridges" 2, "valleys" 3 and a plurality of "perforations" 4, as claimed.

In regard to claims 2, 3, 9, 10, 13, 14 and 18, the introductory statement of intended use and all other functional statements have been carefully considered but are deemed not to impose any structural limitations on the claims distinguishable over the Drossbach device which is further capable of being used to suction air from a collapsible device. Whether the device was actually used in such a manner is dependent upon the performance or non-performance of a future act of use and not upon a particular structural relationship set forth in the claims. Further, the radius of curvature of plastic being greater than the apex distance is based upon the material of the structure being collapsed.

In regard to claims 8 and 17, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

Claims 19-22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Arai.

In regard to the method, the Arai reference discloses a "suction tube" 1 having "ridges" 2 and "valleys" 3 including "perforations" 5 and an "air suction hose" 13 connected to a vacuum pump, as claimed.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drossbach and Arai, respectively.

The Drossbach and Arai references disclose the invention substantially as claimed (discussed supra), but do not disclose the tubes being rectangular. It would have been an obvious matter of design choice to make the tubes rectangular, since applicant has not disclosed that a rectangular tube rather than a cylindrical tube solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a cylindrical tubing.

#### ***Allowable Subject Matter***

Claims 4-7, 15, 16 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McFarland and Martin et al. references pertain to corrugated suction devices, similar to Applicant's.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L Maust whose telephone number is (703) 308-3390. The examiner can normally be reached on Tue. - Fri. 6:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (703) 308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Timothy L Maust  
Primary Examiner  
Art Unit 3751

Tlm  
9/1/04